

E-Mail Request for Emergency Relief

1. Case Number: 98-cv-80 -SLR

2. Check the box that applies:

- Requesting a teleconference with the parties and the court
Requesting an in-person conference with the parties and the court
✓ Requesting either of the above listed options at the court's determination

3. BRIEFLY describe the reason for this **emergency** request.

In light of the Court's March 29 and April 24, 2007 rulings that the Lau patents are infringed, not invalid, and enforceable, and the May 2, 2007, entry of judgment in ACS's favor, Plaintiff ACS respectfully requests the Court's guidance on two matters. First, ACS intends to move for a permanent injunction and, with the Court's permission, proposes that the parties confer on an appropriate briefing schedule for the Court's approval. Second, ACS respectfully requests that the Court lift the stay on the damages and willfulness aspects of the case and schedule a trial for later this year, or at the earliest convenience of the Court thereafter. Counsel is available to discuss the foregoing at the Court's convenience.

*Any text added beyond the limits of this space will be disregarded by the court.

4. Name of opposing counsel contacted about this request: Karen Jacobs Loudon

5. Response of opposing counsel to this request:

Medtronic's opposes ACS's request and intends to file a response in due course

6. Name of local counsel making this request: Frederick L. Cottrell, III

7. Today's Date: May 9, 2007

For court use only.

☐ A teleconference will be held on _____ to be coordinated and
initiated by _____

☐ An in-person discovery conference will be held on: _____

☒ Other: _____

The court will not conduct a trial on willfulness and damages before final resolution on appeal. Although not inclined to enter injunctive relief on these stent cases prior to appeal, the court cannot preclude plaintiff's application and would grant defendant discovery on the eBay factors.

Opposing Counsel's Response to E-Mail Request for Emergency Relief

1. Case Number: 98-cv-80 -SLR
2. BRIEFLY state your response to the **emergency** request made by opposing counsel:

Medtronic believes that ACS's requests are premature, and that any application for permanent injunctive relief or to lift stay to proceed with a trial on damages and willfulness should await a final decision on appeal. Indeed, this Court denied ACS's earlier motion to lift stay to proceed with a trial on damages and willfulness in this case (D.I. 684), and has further held in other stent cases that it is "prudent to address the damages issues only after the liability issues have been finally resolved through appeal . . ." Cordis Corp. v. Boston Scientific Corp., C.A. No. 97-550 (D.I. 1435 at 4). It also has deferred applications for injunctive relief pending appeal. See IMX v. Lending Tree, C.A. No. 03-1067 (D.I. 292). If the Court were to entertain a motion for injunctive relief at this time, Medtronic anticipates that it would need to conduct discovery on the eBay factors.

*Any text added to beyond the limits of this space will be disregarded by the court.

3. Name of local counsel submitting this response: Karen Jacobs Loudon
4. Today's Date: May 9, 2007
